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(916) 324-6594

September 5, 1989

Mr. William L. Kelly
4512 Camila
Yorba Linda, Ca 92686

Dear Mr. Kelly:

RE: Assessor's Parcel No. 936-300-013-9

This is in response to your recent letter to me in which you asked our opinion concerning your property tax assessment for the 1989-90 assessment year.

The property tax assessment history of the property and other facts as you have described them in written correspondence and telephone conversations are as follows:

<u>Year</u>	<u>Structures</u>	<u>Trees</u>	<u>Land</u>	<u>Total</u>
1978	-0-	-0-	\$31,000	\$31,000
1979	-0-	-0-	31,620	31,620
1980	\$3,528	-0-	32,252	35,780
1981	3,596	-0-	32,896	36,492
1982	3,670	-0-	33,554	37,224
1983	3,706	-0-	33,889	37,595
1984	3,780	\$44,100	34,566	82,446
1985	1,433	13,850	35,257	50,540
1986	1,461	14,127	35,962	51,550
1987	1,490	-0-	36,681	38,171
1988	1,519	-0-	37,414	38,993
1989	500	-0-	89,797	90,297

The foregoing reflects that you acquired the subject property consisting of 5.01 acres of land in Riverside County in September 1977 at a price of \$31,000. In 1979, you planted 600 avocado trees and installed irrigation improvements. A base year value for the trees was established in 1984. The reduced tree assessment in 1985 was a result of depressed avocado prices.

The following year the trees were assessed at \$14,127 which reflects a two percent increase from the prior year. In each of the next three years, there was a freeze as a result of which 335 trees died. None of the dead trees have been replaced or removed.

For 1989, the Assessor reviewed recent changes in the real estate market in the area of your property and determined that the market value of the entire property was \$90,297 of which \$89,797 was attributable to land. Mr. Larry Morris of the Assessor's office advised me via telephone that for 1989, frost accounted for only \$500 of the decline in tree value. In other words, had there been no frost in 1989, the market value of the property would have been only \$500 higher than it would have been had there been no trees on the property. Your concern is whether the 1989 assessment is correct.

The applicable law is found in Revenue and Taxation Code section 51 which provides:

For purposes of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for each lien date after the lien date in which the base year value is determined pursuant to Section 110.1, the taxable value of real property shall be the lesser of:

(a) Its base year value, compounded annually since the base year by an inflation factor, which shall be determined as follows:

(1) For any assessment year commencing prior to January 1, 1985, the inflation factor shall be the percentage change in the cost of living, as defined in Section 2212.

(2) For any assessment year commencing after January 1, 1985, the inflation factor shall be the percentage change from December of the prior fiscal year to December of the current fiscal year in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations; provided, that the percentage increase for any assessment year determined pursuant to paragraph (1) or (2) shall not exceed 2 percent of the prior year's value.

(b) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value.

(c) If the property was damaged or destroyed by disaster, misfortune, or calamity and the board of supervisors of the county in which the property is located has not adopted an ordinance pursuant to Section 170, or removed by voluntary action by the taxpayer, the sum of (1)

the lesser of its base year value of land determined under subdivision (a) or full cash value of land determined pursuant to subdivision (b), plus (2) the lesser of its base year value of improvements determined under subdivision (a) or the full cash value of improvements determined pursuant to subdivision (b), which shall then become the base year value until such property is restored, repaired, or reconstructed or other provisions of law require establishment of a new base year value.

(d) If the property was damaged or destroyed by disaster, misfortune or calamity and the board of supervisors in the county in which the property is located has adopted an ordinance pursuant to Section 170, its assessed value as computed pursuant to Section 170.

(e) For purposes of subdivisions (a) and (b), "real property" means that appraisal unit which persons in the marketplace commonly buy and sell as a unit, or which are normally valued separately.

(f) Nothing in this section shall be construed to require the assessor to make an annual reappraisal of all assessable property.

Although 335 of your avocado trees were destroyed by disaster, misfortune or calamity (frost), section 51(c) would not apply to determine the taxable value of your property. The reason for that is that in order to be applicable, section 51(c) requires either that the county board of supervisors "has not adopted an ordinance pursuant to section 170" or that the property thus destroyed be "removed by voluntary action of the taxpayer." In this case, the board of supervisors has adopted an ordinance pursuant to section 170 and the dead trees have not been removed by voluntary action of the taxpayer.

Section 51(d), which provides for a computation of assessed value pursuant to section 170, does not apply here because section 170(b) requires the full cash value of land, improvements and personalty immediately before the damage to exceed the full cash value of the land, improvements and personalty immediately after the damage by \$5,000 or more. (A copy of section 170 is enclosed for your reference.) According to the Assessor, that is not the case here because the land, improvements and personalty lost only \$500 in full cash value because of the frost.

Since neither section 51(c) nor section 51(e) is applicable, the taxable value must be determined as the lesser of the compounded base year value under section 51(a) or the full cash

value (current market value) determined under section 51(b). For this purpose, section (e) defines "real property" as "that appraisal unit which persons in the marketplace commonly buy and sell as a unit" Land and improvements would constitute the appraisal unit for purposes of sections 51(a) and 51(b) as that is the appraisal unit commonly brought and sold by persons in the marketplace.

The compounded base year value under section 51(a) would be the sum of the base year value of the structures, trees and land compounded at two percent per year from the date each base year value was established to the present. That figure by my calculation is \$91,027. Since the full cash value under section 51(b) is \$90,297, that is the amount the Assessor is required to enroll as of March 1, 1989.

Based on the foregoing analysis, we are of the opinion the Assessor has correctly assessed your property for 1989.

As indicated above, however, section 51(c) would be applicable to determine taxable value for future lien dates if the dead trees were removed. In that event, the improvements and land would be treated separately in accordance with section 51(c) and your taxable value could be considerably less.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

EFE:cb/2159D

Enclosure

cc: Hon. Frank C. Seeley
Riverside County Assessor
Mr. John W. Hagerty
Mr. Verne Walton